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PETER J. EPSTEIN

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February 2, 2006

Marlene Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

DOCKET WITH COPY ORIGINAL

Re: MB Docket No. 05-311, Comments of Town of Wilbraham, Massachusetts

Dear Secretary Dortch:

Enclosed please find an original and four (4) copies of the Comments of the Town of Wilbraham, Massachusetts re: In the Matter of Implementation of Section 621(a)(1) of the Cable Act of 1984, MB Docket No. 05-311.

Thank you for your attention to this matter. Please do not hesitate to contact me should you have any questions about this filing

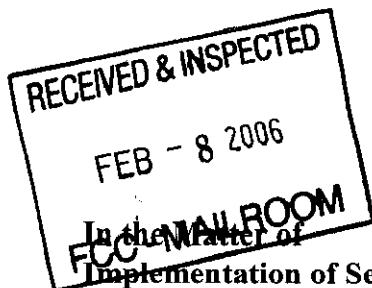
Very truly yours,

William August, Esq.

Cc: Board of Selectmen, Town of Wilbraham, Massachusetts.

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**Before the  
Federal Communications Commission  
Washington, D.C.**

**In the Matter of  
Implementation of Section 621(a)(1)  
Of the Cable Act of 1984**

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**MB Docket No. 05-311**

**Comments of the Town of Wilbraham, Massachusetts**

The Board of Selectmen of the Town of Wilbraham, Massachusetts, in their capacity as local franchising authority, file these comments in the above-captioned matter.

The Town is very concerned by the FCC's apparent willingness to consider regulations that would curtail or usurp municipal powers that have existed for decades. The local franchising process has generated valuable communications benefits in the form of:

- school outlets and service;
- municipal building outlets and service;
- community channels, studios, training and equipment all of which promote priceless First Amendment values and build vibrant localism;
- institutional networks that in the long run save consumers money by enabling towns to network at very cost-effective rates;
- emergency communications for local first responders, presumably a priority of our government;
- franchising that respects proprietary right-of-way management needs of the local custodians of the public ways;
- Reasonable franchise administration terms and conditions (performance bonds; service evaluation hearings; complaint reporting);
- modest tailoring of benefits to meet reasonable local needs.

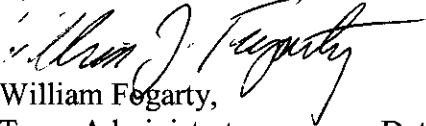
The benefits generated by the local franchising process have been regarded by the cable industry and municipal officials as a fair quid pro quo for use of the public ways which are maintained at enormous cost to municipalities. These benefits have not been generated by passive reliance on market forces, but by local franchising (which is a form of market negotiation). Although local franchising of cable operators has resulted in incalculable benefits to municipalities, school systems, residents and consumers nationwide, the rulemaking does not bespeak a sense of balanced appreciation of these benefits, as the rulemaking is primarily concerned about short-term industry problems e.g., temporary market entry delay. Any shortening of the initial licensing process or constriction of initial licensing powers will imperil municipal ability to exercise the municipal right to negotiate for fair use of local public ways. The local franchising process that has existed for decades has not interfered with cable company financial success. The benefits of franchising have greatly outweighed the temporary and

relatively small regulatory burdens associated with franchising. Once a franchise is granted, cable operators are virtually assured continuity of operations and merely have to undergo a renewal process with franchise fees capped by federal law. Smaller "mom & pop" cable companies thrived for decades notwithstanding local franchising. Are we to believe that telephone company overbuilders cannot absorb the franchising costs that much smaller cable operators always absorbed and readily handled?

Finally, the Town of Wilbraham urges that the Commission's consideration of level playing field requirements is unfair. Courts and legislatures have respectively upheld and adopted level playing field requirements. We are advised that in Massachusetts, the overbuild applicant now seeking licenses represented that it was committed to meet level playing field requirements of incumbents. Thus any federal agency interference with level playing field issues should prospectively be applied to incumbent franchises issued and executed in the future, and should not retroactively abrogate existing rights.

In conclusion, we respectfully submit that it is inappropriate for the FCC to favor telephone industry interests over decades-old and time-proven local franchising rights. We believe that an objective analysis will show great municipal need for and benefit from local franchising, and the FCC should not usurp local powers. We are fearful that the FCC is concluding without full analysis that delays in initial franchising are caused by the existing legal framework, when other causes appear to be at play.

Respectfully submitted,  
Board of Selectmen of the  
Town of Wilbraham, Massachusetts  
By their authorized representative

  
William Fogarty,  
Town Administrator

Date: January 30, 2006